IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/01/2005

CORAM

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P.M.P. No.9562 of 2004
in
W.P. No.18767 of 1990

:ORDER

The petitioner has filed Writ Petition No.18767 of 1990 seeking for the issuance of a writ of certiorari, calling for the entire records relating to Section 4(1) Notification published in the Tamil Nadu Government gazette dated 22.11.1989 in Part II Section supplement 2 pages 4 and 5 and Section 6 declaration published in the Tamil Nadu Government Gazette dated 07.11.1990 in Part II Section 2 (Supplement) page 1 issued by the respondents and to quash the said notification in so far as the petitioner's 30 cents Tamarind thope in Survey No.505/3 in Mylappapuram Village Venkadampatti Post, Ambasamudram Taluk, Nellai Kattabomman District, sought to be acquired. Final order was passed in the Writ Petition on 10.11.1998 and the operative portion of the same reads as follows:-

" When the matter was called on 9.11.1998, there was no representation on behalf of the petitioner and the matter was posted to 10.11.199 8 for dismissal.
Even today, when the matter was called, there is no representation on behalf of the petitioner. Hence this Writ Petition is dismissed for default. Consequently, W.M.P. Nos.29573/90 and 28977 of 1991 are closed. "

2. Subsequent to the dismissal of the Writ Petition, W.P.M.P.(SR). No.150775 of 2003 was filed on 22.12.2003, seeking to set aside the order of dismissal dated 10.11.1998, on the ground that the petitioner came to know about the order of dismissal only in December, 2003. The same was not numbered as it was not filed along with a petition for condonation of delay.

3. Whileso, the present petition was filed on 22.03.2004 to condone the delay of 1833 days in filing the petition for restoration in WPMP.SR. No.150755 of 2003.

4. Heard the counsel on either side and perused the records placed before me. The petitioner has not given any valid reason, explaining the huge delay of 1833 days. Though it is alleged that the petitioner came to know about the order of dismissal only during December 2003, no records have been placed before this Court to justify the said contention.

5. Learned counsel for the petitioner relied upon the ruling of this Court reported in (2001) 1 M.L.J. 105 (Arunachalam v. Anunachalam Chettiar). In para No.7, it has been held thus:-

" The upper forum of law have more often held that even if the delay is not properly explained, the petitioner should not be punished with denial of opportunity to prosecute the case, wherein his valuable rights are involved and when once such petitioners are not allowed to participate in the further proceedings by dismissing the condonation applications filed to condone the delay on certain technicalities, the other side whether has any genuine rights or not, wins the entire case and the petitioner loses all his rights in the suit and to avoid such calamities, the petitioners could only be punished with costs and not with denial of opportunity to prosecute the case wherein his valuable rights are involved."

That was a case, where the petitioner sought for condonation of delay on the ground that he met with major calamities in his life, resulting in serious setbacks in his habits and consequently in his health. Considering the said aspects, this Court condoned the delay of 558 days in filing the petition to restore the suit dismissed for default. Coming to the present case, the reason given for the delay is not substantiated and hence, the above ruling is not applicable.

6. The next ruling relied on is the one reported in 2002 (1) CTC 769 (Ram Nath Sao @ Ram Nath Sahu v. Gobardhan Sao). In paragraph No.12 , the Supreme Court has ruled as follows:-

" Thus it becomes plaint(sic) that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula or accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party again whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to

pass upon the parties either way."

In the above case, the First Appeal was listed for hearing. The appellant's counsel informed the client about the listing of the matter, whereupon, one of the appellants in the appeal came and met his counsel and during the course of discussion, it came to be known that some of the appellants expired. The legal heirs gave the vakalatnama belatedly which ultimately resulted in delay. Considering the said aspect, the Honourable Supreme Court ordered for condonation of the delay. But, what is to be borne in mind is that the Supreme Court has cautioned that the Courts, while considering matters of this nature, should not lose sight of the fact that by not taking steps within the time prescribed a valuable right that has accrued to the other party should not be lightly defeated by condoning delay in a routine like manner.

7. The other ruling on which the learned counsel for the petitioner placed reliance is, (1998) 7 SCC 123 (N.Balakrishnan v. M. Krishnamurthy). The Supreme Court, in para Nos. 9, 12 and 13, has observed as follows:-

" 9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.
12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari (AIR 1969 SC 575) and State of W.B. v. Administrator, Howrah Municipality (1972) 1 SCC 366.
13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a

salutary guideline that when courts condone the delay due to latches on the part of the applicant, the court shall compensate the opposite party for his loss. "

It has to be noted that in the above case, the Supreme Court has held in emphatic terms that condonation of delay is a matter of discretion of the court and that Section 5 of the Limitation Act does not say that such discretion can be used only if the delay is within a certain limit and that length of delay is no matter, acceptability of the explanation is the only criterion.

8. In the light of the rulings of the Supreme Court referred to above as also that of this Court and on a careful perusal of the affidavit filed in support of the Miscellaneous Petition, I am of the view that the petitioner has not made out a case for condonation of delay. The petitioner is said to have came to know about the order of dismissal dated 10.12.1998 only in December, 2003. It has to be taken note of that in between that, 1833 days lapsed. For such an inordinate delay, no valid or acceptable reason is given by the petitioner. Excepting the bald averment that he only came to know about the order of dismissal in December, 2003, no evidence has been placed before this court to substantiate the version of the petitioner.

9. Mr.R.Kanniappan, learned Government Advocate, appearing for the respondents, submitted that in this case, the Notification under Section 4(1) of the Land Acquisition Act was made on 22.11.1989; the enquiry under Section-5A was held on 27.1.1990, in which the petitioner also participated; and thereafter, the award was passed on 20.11.1992. According to him, possession of the said land was handed over to the Panchayat/Requisitioning Body, which required the said land for the purpose of burial ground, on 20.3.2003. It is also submitted by the learned Government Advocate that the panchayat, after taking possession of the land, started burying the bodies.

10. As cautioned by the Supreme Court in the ruling reported in 2002 (1) CTC 769 (cited supra), while considering the matters relating to condonation of delay, courts should not lose the sight of the fact that by not taking steps within the time prescribed a valuable right that has accrued to the other party should not be lightly defeated by condoning delay in a routine like manner.

11. The facts of this case would show that land was handed over to the Panchayat and the Panchayat started to use the area as burial ground as early as 20.3.2003, whereas, the above petition came to be filed only on 22.3.2004, that is, after a lapse of about one year. It is also pertinent to point out here that the petitioner has not assigned any valid and genuine

reason for condonation of the delay of 5 years. Now the land acquired being used for the purpose it was acquired, namely, as burial ground, I do not find any reason at all to allow this petition.

12. In view of the foregoing reasons, the Miscellaneous Petition is

liable to be dismissed and accordingly, it is dismissed.

JI.